

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JOSEPH EUGENE HOWARD,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-11006

MOCC STAFF MEMBER DANIEL HAHN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Kelly Foster's Motion to Dismiss (ECF No. 133) and Plaintiff Joseph Eugene Howard's Letter-Form Motion for Judgment by Default (ECF No. 138). By Standing Order entered April 8, 2013, and filed in this case on May 14, 2013, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings and a recommendation (PF&R). Magistrate Judge Tinsley filed two PF&Rs (ECF Nos. 150 and 151) on February 1, 2017, recommending that this Court **GRANT** Defendant Foster's Motion to Dismiss, **DENY** Plaintiff's Letter-Form Motion for Judgment by Default (ECF No. 138), and **DISMISS** Defendants Cory DiMallo, Lyle Leshner, James McCloud, T.E. Tawes, M.A. Elswick, and Officer Godfrey, without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file


timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&Rs in this case were due on February 21, 2017. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&Rs (ECF Nos. 150 and 151), **GRANTS** Defendant Kelly Foster's Motion to Dismiss (ECF No. 133) and **DISMISSES WITH PREJUDICE** Kelly Foster as a defendant in this case, **DENIES** Plaintiff's Letter-Form Motion for Judgment by Default (ECF No. 138), and **DISMISSES WITHOUT PREJUDICE** Defendants Cory DiMallo, Lyle Leshner, James McCloud, T.E. Tawes, M.A. Elswick, and Officer Godfrey pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 24, 2017



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE